

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

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PATRELL SCOTT,	:	CASE NO. 4:16 CV 1546
	:	
Petitioner,	:	
	:	
vs.	:	OPINION & ORDER
	:	
WARDEN LAZAROFF,	:	
	:	
Respondent.	:	
	:	

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JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

*Pro se* petitioner Patrell Scott, a state inmate, has filed this action seeking a writ of habeas corpus pursuant to 28 U.S.C. §2254. In 2012, he was convicted in the Mahoning County Court of Common Pleas, pursuant to a guilty plea, of involuntary manslaughter with a gun specification and tampering with evidence. He was sentenced to ten years' imprisonment.

The Ohio Court of Appeals affirmed his conviction and sentence on direct appeal. Petitioner did not file a timely appeal with the Ohio Supreme Court as required by Ohio's procedural rules. He filed a motion with the Ohio Supreme Court for leave to file a delayed appeal in which he cited his pro se status, his indigence, and the time constraints he faced to appeal. However, the Ohio Supreme Court denied his motion for leave to file a delayed appeal.

Petitioner now asserts the same grounds in this petition that he raised on direct appeal before the Ohio Court of Appeals.

Pursuant to Rule 4 of the Rules Governing §2254 Cases, a district court is required to

examine a habeas petition and determine whether “it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court.” Rule 4 of the Rules Governing § 2254 Cases; *see also* 28 U.S.C. § 2243. If so, the district court must dismiss the petition. Rule 4; *see Allen v. Perini*, 424 F.2d 134, 141 (6th Cir. 1970) (district court has the duty to “screen out” petitions that lack merit on their face).

This petition must be summarily dismissed. “A petitioner procedurally defaults claims for habeas relief if the petitioner has not presented those claims to the state courts in accordance with the state’s procedural rules.” *Simpson v. Jones*, 238 F.3d 399, 406 (6<sup>th</sup> Cir. 2000). When a state prisoner has defaulted his federal claims in state court pursuant to an independent and adequate state procedural rule, federal habeas review is barred unless the prisoner can demonstrate cause for the default and actual prejudice. *Bonilla v. Hurley*, 370 F.3d 494, 497 (6<sup>th</sup> Cir. 2004).

Petitioner was barred from presenting his claims to the Ohio Supreme Court pursuant to an independent and adequate state procedural rule, and he has not set forth facts in his petition sufficient to suggest adequate cause for his failure to raise his claims in state court and actual prejudice to him. *See Bonilla*, 370 F.3d 494 (finding petitioner’s habeas claims procedurally defaulted because the petitioner failed to file a timely notice of appeal with the Ohio Supreme Court, which denied his motion for leave to file a delayed appeal, and the petitioner failed to demonstrate any objective factor that prevented his compliance with the state procedural rule).

Accordingly, petitioner’s motion to proceed in forma pauperis (Doc. No. 2) is granted, but for his petition is dismissed pursuant to Rule 4 of the Rules Governing Section 2254. The Court further certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision

could not be taken in good faith and there is no basis on which to issue a certificate of appealability.

IT IS SO ORDERED.

Dated: July 6, 2016

s/ *James S. Gwin*

JAMES S. GWIN

UNITED STATES DISTRICT JUDGE